

## **PUBLIC WORKS CONTRACT**

(On-Call Services)

This Public Works Contract (“Contract”) is entered into as of the effective date set forth below by and between the State of Idaho, Division of Veterans Services (the “Division”) and the individual, partnership, corporation or other entity executing this Contract (the “Contractor”). For and in consideration of the covenants contained in this Contract, the parties agree as set forth herein.

### **Section I – *Contract Documents***

1.1 The Contract consists of and precedence is established by the order of the following documents incorporated into this Contract: 1) any amendment executed by the parties; 2) this Public Works Contract; 3) the Request for Informal Bids; and, 4) the Contractor’s Informal Bid. These documents are complementary and what is required by one shall be binding as if required by all. In the case of any conflict or inconsistency arising under the documents, a document identified with a lower number in this section shall supersede a higher numbered document to the extent necessary to resolve any such conflict or inconsistency. No conflict or inconsistency shall be deemed to occur in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents. No conflict or inconsistency shall be deemed to occur in the event an issue addressed in one of the above mentioned documents is an additional or supplemental requirement to an issue addressed in another of such documents.

1.2 The following attachments are incorporated into the Contract by this reference:

Request for Informal Bids and all attachments thereto (the “Request for Bids”)  
Contractor’s Informal Bid (the “Bid”)

### **Section II – *On-Call Services***

The Contractor shall be available to perform the services, including supplying and installing materials, set forth in the Request for Bids and the Bid (collectively, these services are the “Project”) for the Division. The Contractor shall perform the Project at the Division location set forth in the Request for Bids (the “Worksite”). The Contractor shall not substitute or vary the materials or subcontractors specified in the Request for Bids or the Bid without the prior written permission of the Division.

The Division may contact Contractor to perform the Project on an as-needed basis. Contractor shall coordinate Contractor’s performance of the Project with Trent Hansen, the project coordinator or the project coordinator’s designee (the “Project Coordinator”). All services shall be documented on a work-order signed by the Project Coordinator. The Project Coordinator will identify whether the requested services under the Project are an emergency or routine. In the event of an emergency, Contractor shall respond to the Worksite and implement temporary or permanent repairs within three (3) hours of the contact by the Project Coordinator. If the Project Coordinator identifies requested services as routine, Contractor will respond to and implement temporary or permanent repairs between the hours of 7:00 a.m. and 6:00 p.m. on the next occurring weekday (Monday to Friday), excluding State of Idaho holidays. Contractor shall maintain the Worksite in a neat and orderly condition as reasonably directed by the Project

Coordinator and shall comply with all reasonable procedures established by the Project Coordinator.

### **Section III – *Term***

This Contract is effective on October 15, 2010 and shall expire two years following the effective date. This Contract may be modified, including extensions, only as provided in section 8.10.

### **Section IV – *Compliance with Law***

Contractor shall comply with all requirements of federal and state statutes, rules, and regulations applicable to Contractor and to the Project. Applicable laws include, but are not limited to: Public Works Contractors licensing pursuant to Idaho Code title 54 chapter 19; state and federal occupational health and safety laws; trade and professional licensing and certification laws; building codes; the provisions of Idaho Code title 44 chapter 10 concerning employment under public works contracts; Idaho Code title 63 chapter 15 concerning authorization to do business and payment of taxes; and, the provisions of Idaho Code section 72-1717 concerning drug-free workplaces.

### **Section V – *Performance and Warranty***

Contractor shall transfer all warranties and guarantees for products and materials installed by Contractor and its agents, including subcontractors, to the Division. Contractor and its agents shall comply with all manufacturer's specifications and instructions concerning the installation of products and materials on the Project.

Contractor shall guarantee that Contractor's and its agents' work is free from defects in materials for a period of one (1) year following the Completion Date. Contractor shall repair or replace any defect in workmanship arising within such guarantee period free of charge or cost to the Division.

### **Section VI – *Costs and Billing***

The Division shall not be liable to the Contractor for any expenses Contractor pays or incurs unless otherwise agreed to in writing by the Division or for services performed prior to the Commencement Date. Except as set forth in the Contract, the Contractor shall supply, at its sole expense, all equipment, tools, materials or supplies to perform the Project.

Costs for the Project shall not exceed sixty thousand dollars (\$60,000), including labor and materials or parts, during the term of the Contract without the prior written approval of the Division and the submission by the Contractor of proof of compliance with the licensure and bonding requirements of Idaho Code title 54 chapter 19. The costs for the Project paid by the Division to the Contractor under this Contract shall not exceed sixty thousand dollars (\$60,000). If a federal or state audit indicates that payments to the Contractor fail to comply with applicable federal or state laws, rules or regulations, the Contractor shall refund and pay to the Division any compensation paid to Contractor arising from such noncompliance, plus costs, including audit costs.

Contractor shall bill the Division for the actual labor performed for the Project, subject to the not to exceed costs set forth above, at the labor rates specified in the Bid (the "Labor Rates"). Travel and other business expenses shall not be a cost billed to the Division except to the extent

that they are overhead costs reflected in the Labor Rates. The Contractor shall bill using the regular rate for all work performed between the hours of 7:00 a.m. and 6:00 p.m. on weekdays (Monday to Friday), excluding State of Idaho holidays as defined in Idaho Code section 73-108. Contractor may bill using the overtime rate for all work performed outside the hours of 7:00 a.m. and 6:00 p.m. and on Saturdays, Sundays and State of Idaho holidays as defined in Idaho Code section 73-108.

Contractor shall bill the Division for materials and parts at the cost to the Contractor plus the following percentage markup: %. Permit fees, shipping charges, packing charges, handling or delivery charges, and sales and use taxes shall be considered reimbursable expenses and shall not be subject to the materials markup set forth above.

The Contractor shall submit invoices no more than once per month to the Division. Invoice shall contain the following:

- The name and address of the Contractor
- The date(s) the Contractor performed each service
- A description of the service
- The labor rate applicable to the service
- The number of hours billed for the service
- The part or material supplied
- The cost to the Contractor for the part or material and the applicable markup  
%

The Division, in its discretion, may require written documentation of invoice items as a condition of payment. If the Division requests written documentation substantiating an invoice item, the item shall be severed from the invoice until the Division approves the item and the Division shall not be liable for payment prior to approval. Upon approval of an invoice, the Division shall make payment in accordance with Idaho Code section 67-2302. The Division may withhold payment in the amount of costs or losses to the Division from performance by the Contractor failing to meet the requirements of this Contract and from the Contractor's failure to complete the Project by the Completion Date.

## ***Section VII –Bonding and Insurance***

7.1 If the Project costs exceed ten thousand dollars (\$10,000.00), Contractor shall secure and maintain in force until all work on the Project is completed, at Contractor's expense, performance and payment bonds issued by a surety or sureties licensed to conduct business in the State of Idaho and acceptable to the Division. The performance and payment bonds shall be issued in the full amount of the Project costs.

7.2 For the duration of this Contract and until all work on the Project is completed, Contractor shall have and maintain, at Contractor's expense, the following types of insurance and shall comply with all limits, terms and conditions of such insurance:

i. Commercial General and Umbrella Liability Insurance. Insured/Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Commercial General Liability (CGL) Insurance and, if necessary, Commercial Umbrella covering bodily injury and property damage. This insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability

arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. Combined single limit shall not be less than \$500,000 each occurrence and in the aggregate.

ii. Workers' Compensation. Where required by law, the Insured/Contractor and its subcontractors, if any, shall maintain all statutorily required Workers Compensation coverage. Coverage shall include Employer's Liability, at minimum limits of \$100,000/\$500,000/\$100,000. The Insured/Contractor must maintain coverage issued by a surety licensed to write workers' compensation insurance in the state of Idaho or from a surety issued an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission.

iii. Automobile Liability. Insured/Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Automobile Liability Insurance covering owned or non-owned vehicles. Combined single limit per occurrence shall not be less than \$500,000.

Except where inapplicable, the insurance coverage required for performance of the Contract shall include the State of Idaho, Division of Veterans Services and its divisions, officers and employees as additional insureds but only with respect to the Contractor's activities to be performed under this Contract.

Contractor shall ensure that all policies of insurance are endorsed to read that the insurer shall endeavor to provide to the Division sixty (60) days prior written notice of cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverage(s).

As evidence of the insurance coverages required by this Contract, Contractor shall furnish certificates of insurance to the Division prior to beginning work or providing goods pursuant to the Agreement. The certificates of insurance shall specify all of the parties who are endorsed on the policy as additional insureds or loss payees. The Division may further require copies of the specific insurance policies or endorsements evidencing the coverages required under this Contract. Insurance coverage required under this Contract shall be obtained from insurance companies acceptable to the Division, authorized to transact business in Idaho, and with no less than an A M Best rating of A. The Contractor shall be financially responsible for all deductibles, self-insured retentions and self insurance.

## **Section VII – Miscellaneous Provisions**

8.1. Assignment and Subcontracting. Contractor shall not subcontract or assign the Contract without the prior written approval of the Division. The Division will approve subcontracts in the Division's sole judgment and under such terms and conditions as the Division shall deem necessary. Notwithstanding the Division's approval of any subcontract, the Contractor shall be solely responsible for the satisfactory performance of all subcontractors and subcontracted services and for the compensation of all subcontractors. Contractor shall be and shall remain liable for all damages to the Division caused by negligent performance or non-performance of the subcontracted services.

8.2. Termination. Either party may terminate the Contract immediately upon written notice, or upon such notice as such party, in its sole discretion, deems appropriate, if at any time:

(a) the other party is in material breach of any warranty, term, condition, covenant or obligation under the Contract; (b) judicial interpretation of federal or state laws, regulations, or rules renders fulfillment of the Contract infeasible or impossible; (c) Contractor's license or certification required by law is suspended, not renewed, or is otherwise not in effect at the time service is provided; (d) Contractor fails to comply with any applicable law, regulation, or rule; or, (e) the actions or inactions of the Contractor materially jeopardize a federal or state license or certification held by the Division.

8.3. Indemnification. Contractor shall indemnify, defend and save harmless the State of Idaho and the Division, its officers, agents and employees from and against any and all liability, claims, damages, losses, expenses, actions, attorneys' fees and suits whatsoever caused by or arising out of or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this contract, or arising from the Contractor's, its officers, employees, subcontractors, or agents failure to comply with any applicable state, federal, local law, statute, rule, regulation or act. This duty to indemnify, defend and hold harmless shall encompass any claims that include or allege negligence of contractor, its agents, officers or employees other than claims which arise solely out of the negligence on the part of the State of Idaho, and this duty shall survive the termination or expiration of this contract.

8.4. Governing Law. The Contract shall be governed by and construed under the laws of the State of Idaho and the parties hereto consent to the jurisdiction of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to the Contract.

8.5. Officials Not Personally Liable. In no event shall any official, officer, employee or agent of the State of Idaho or of the Division be liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, the Contract, express or implied.

8.6. Notices. Any notice given in connection with the Contract shall be given in writing and shall be delivered either by hand or by certified mail, return receipt requested, to the other party at the address stated below the party's signature. Either party may change its address by giving notice of the change in accordance with this section.

8.7. Attorney Fees. In the event of a legal proceeding of any kind instituted under the Contract or instituted to obtain performance or to remedy a default under the Contract, the prevailing party shall be awarded such additional sums as the court may adjudge for reasonable attorney fees and to pay all costs and disbursements incurred in connection therewith.

8.8. Sufficient Appropriation. It is understood and agreed that the Division is a governmental entity, and the Contract shall in no way or manner be construed so as to bind or obligate the Division or the State of Idaho beyond the term of any particular appropriation of funds by the State Legislature or United States Congress as may exist from time to time. The Division reserves the right to reduce the contract automatically or terminate the Contract if, in its sole judgment, the legislature of the State of Idaho or the United States Congress fails, neglects, or refuses to appropriate sufficient funds as may be required for the Division to continue payments. Any such reduction or termination shall take effect on thirty (30) days' prior notice and be otherwise effective as provided in this Contract.

8.9. Nonwaiver of Breach. The failure of the Division to require strict performance of any term or condition of the Contract, or to exercise any option herein, in any one or all instances

shall not be construed to be a waiver or relinquishment of any such term or condition. The same shall be and remain in full force and effect unless there is a prior written waiver by the Division.

8.10. Complete Statement of Terms. The Contract constitutes the entire agreement between the parties hereto and shall supersede all previous proposals, oral or written, negotiations, representations commitments, and all other communications between the parties. The Contract may not be released, discharged, changed, extended, modified, subcontracted or assigned in whole or in part, and no claim for additional services not specifically provided herein will be allowed by the Division, except to the extent provided by an instrument in writing signed by a duly authorized representative of the Division and the Contractor.

IN WITNESS WHEREOF, the parties have executed this agreement.

CONTRACTOR:

STATE OF IDAHO:

Division of Veterans Services

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

Address:

Address:

Attention:  
Date:

Attention:  
Date: